



# COMMONWEALTH of VIRGINIA

## *Department of Health*

DONALD R. STERN, MD, MPH  
ACTING STATE HEALTH COMMISSIONER

June 26, 1995

Dear Doctor:

As you know, in 1994 the results of a clinical trial sponsored by the National Institutes of Health indicated that zidovudine (ZDV) administered to a select group of human immunodeficiency virus (HIV) infected pregnant women and their infants could reduce the risk of perinatal HIV transmission by approximately two-thirds. Shortly after the results became available, the Centers for Disease Control and Prevention (CDC) issued recommendations for the use of ZDV to reduce perinatal transmission of HIV. These recommendations received wide publication, and a summary of them was printed in the July 1994 issue of the Virginia Epidemiology Bulletin (VEB).

Pursuant to these recommendations, the 1995 Virginia General Assembly enacted a new law that will require pregnant women to be advised about the importance of being tested for HIV infection and the potential benefits of ZDV in reducing HIV transmission. Enclosed is a copy of that law. I have also enclosed copies of Sections 32.1-36.1 and 32.1-37.2 of the Code of Virginia. These Code sections are referenced in the law and relate to the confidentiality of HIV test results and the continuing requirements for informed consent for testing, face-to-face disclosure of HIV test results and appropriate counseling.

Effective July 1, 1995, the new law requires every physician rendering prenatal care to advise routinely each of his/her pregnant patients of the importance of testing for HIV infection and to request consent for such testing. Physicians will also be required to counsel those pregnant patients who test positive for HIV infection about: 1) the risk of transmitting HIV to the fetus; and 2) the advisability of receiving treatment to reduce the risk of such transmission. Any pregnant woman may refuse consent for testing or any recommended treatment, and documentation of that refusal must be maintained in the patient's medical record.

The CDC is currently in the process of formulating further recommendations for the counseling and testing of pregnant women. When issued, these recommendations will be printed in the VEB which will be sent to each of you.

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Thank you for your continuing interest in preventing HIV infection. If you need additional information or another copy of the July 1994 VEB, please call the Department's toll free AIDS Hotline at 1-800-533-4148.

Sincerely,

A handwritten signature in cursive script, reading "Donald R. Stern" followed by a stylized flourish or initials.

Donald R. Stern, MD, MPH  
Acting State Health Commissioner

Enclosures

c: District Health Directors

# VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

## CHAPTER 309

*An Act to amend the Code of Virginia by adding a section numbered 54.1-2403.01, relating to a certain routine component of prenatal care.*

[H 1921]

Approved March 16, 1995

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 54.1-2403.01 as follows:

*§ 54.1-2403.01. Routine component of prenatal care.*

*As a routine component of prenatal care, every practitioner licensed pursuant to this subtitle who renders prenatal care, regardless of the site of such practice, shall advise every pregnant woman who is his patient of the value of testing for Human Immunodeficiency Viruses (HIV) infection and shall request of each such pregnant woman consent to such testing. The confidentiality provisions of § 32.1-36.1, the informed consent stipulations, test result disclosure conditions, and appropriate counseling requirements of § 32.1-37.2 shall apply to any HIV testing conducted pursuant to this section. Practitioners shall counsel all pregnant women with HIV-positive test results about the dangers to the fetus and the advisability of receiving treatment in accordance with the then current Centers for Disease Control recommendations for HIV-positive pregnant women. Any pregnant woman shall have the right to refuse consent to testing for HIV infection and any recommended treatment. Documentation of such refusal shall be maintained in the patient's medical record.*

**§32.1-36.1. Confidentiality of test for human immunodeficiency virus; civil penalty; individual action for damages or penalty.** — A. The results of every test to determine infection with human immunodeficiency virus shall be confidential. Such information may only be released to the following persons:

1. The subject of the test or his legally authorized representative.
2. Any person designated in a release signed by the subject of the test or his legally authorized representative.
3. The Department of Health.
4. Health care providers for purposes of consultation or providing care and treatment to the person who was the subject of the test or providing care and treatment to a child of a woman who, at the time of such child's birth, was known to be infected with human immunodeficiency virus.
5. Health care facility staff committees which monitor, evaluate, or review programs or services.
6. Medical or epidemiological researchers for use as statistical data only.
7. Any person allowed access to such information by a court order.
8. Any facility which procures, processes, distributes or uses blood, other body fluids, tissues or organs.
9. Any person authorized by law to receive such information.
10. The parents or other legal custodian of the subject of the test if the subject is a minor.
11. The spouse of the subject of the test.
12. Departments of health located outside the Commonwealth by the Virginia Department of Health for the purposes of disease surveillance and investigation.

B. In any action brought under this section, if the court finds that a person has willfully or through gross negligence made an unauthorized disclosure in violation of this section, the Attorney General, any attorney for the Commonwealth, or any attorney for the county, city or town in which the violation occurred may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than \$5,000 per violation.

C. Any person who is the subject of an unauthorized disclosure pursuant to this section shall be entitled to initiate an action to recover actual damages, if any, or \$100, whichever is greater. In addition, such person may also be awarded reasonable attorney's fees and court costs.

D. This section shall not be deemed to create any duty on the part of any person who receives such test results, where none exists otherwise, to release the results to a person listed herein as authorized to receive them. (1989, c. 613; 1990, c. 777.)

**§32.1-37.2. Informed consent for testing for human immunodeficiency virus; condition on disclosure of test results; counseling required; exceptions.** — A. Prior to performing any test to determine infection with human immunodeficiency virus, the subject of the test shall be given an oral or written explanation of the meaning of the test. Except as otherwise authorized in this Code, informed consent shall be obtained before such a test is performed.

Informed consent for testing for infection with human immunodeficiency virus shall be deemed to have been obtained (i) when an individual seeks the services of a facility offering anonymous testing for infection with human immunodeficiency virus; (ii) when blood specimens which were obtained for routine diagnostic purposes are tested in order to conduct seroprevalence studies of infection with human immunodeficiency virus if such studies are designed to prevent any specimen from being identified with any specific individual; and (iii) when an individual donates or sells his blood.

B. Every person who is the subject of any test to determine infection for human immunodeficiency virus shall be afforded the opportunity for individual face-to-face disclosure of the test results and appropriate counseling. Appropriate counseling shall include, but not be limited to, the meaning of the test results, the need for additional testing, the etiology, prevention and effects of acquired immunodeficiency syndrome, the availability of appropriate health care, mental health care and social services, the need to notify any person who may have been exposed to the virus and the availability of assistance through the Department of Health in notifying such individuals.

C. Opportunity for face-to-face disclosure of the test results and appropriate counseling shall not be required when the tests are conducted by blood collection agencies. However, all blood collection agencies shall notify the Board of Health of any positive tests.

D. In the case of a person applying for accident and sickness or life insurance who is the subject of a test to determine infection for human immunodeficiency virus, insurers' practices including an explanation of the meaning of the test, the manner of obtaining informed consent, the method of disclosure of the test results and any counseling requirements shall be as set forth in the regulations of the State Corporation Commission. (1989, c. 613.)